

LEVEE ON THE MISSISSIPPI RIVER, IN THE STATES OF
TENNESSEE AND KENTUCKY.

[To accompany Joint Resolution No. 29.]

APRIL 2, 1860.—Ordered to be printed.

Mr. THAYER, from the Committee on Public Lands, made the following

REPORT.

The select committee to whom were referred a joint resolution of this House and sundry memorials from citizens of Shelby, Tipton, Lauderdale, Dyer, and Obion counties, in Tennessee, requesting a survey of the eastern bank of the Mississippi river, with a view to ascertaining the cost of a permanent levee to protect their bottom lands from overflow, and asking that a grant of lands or other means be furnished by the general government to aid in the construction of said levee, beg leave to report:

That the questions presented for their consideration are of great importance, both as respects the territory proposed to be reclaimed and to the whole country having any relations therewith.

To show how these memorialists came in possession of these lands, we will cite the law relative thereto. In "An act to amend an act entitled 'An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same,' passed the 18th April, 1806," the State of Tennessee was constituted the agent of the government, with full power and authority to sell and dispose of the vacant unappropriated and refuse lands within the limits of said State, &c.

In this act we find that Tennessee was authorized to satisfy all legal and bona fide claims of North Carolina upon said lands by making provisions by law. After satisfying the claims aforesaid, "the State of Tennessee shall offer for sale the rest and residue of said lands in such manner, in such quantities, and by such descriptions, as may be most convenient; and for the full term of three years from and after the time herein allowed for the location of North Carolina land warrants, may sell and dispose of, and perfect titles to the same, at a price not less than twelve and a half cents per acre." And finally, "so much of the said lands as may remain unsold at the expiration of the said term of three years shall be disposed of as aforesaid, at such price per acre as it may bring in open market: *Provided*, That the

proceeds of the sale of said lands, over and above so much thereof as shall be necessary to the satisfaction of said North Carolina claims, shall be accounted for and paid over by the State of Tennessee to the United States."

The lands referred to in this law, and which the State of Tennessee was authorized to dispose of, constituted in part all the lands now sought to be protected from inundation by these memorialists. It will be perceived that they purchased them by authority of Congress, and paid what in all probability at that time was considered a fair price for them, taking into account the large amount of more valuable highlands in other portions of the public domain that were then offered for sale by the government at low rates.

It is not a point to be considered, in the investigation of the matters referred to this committee, that because the State of Tennessee incurred certain expenses in its administration of the public lands within her limits, which Congress thought proper to reimburse her, it did, by an act passed in 1846, surrender to Tennessee the proceeds of the sale of said lands, as well, also, the lands then unsold; for that law expressly stipulates that the surrender was made "in satisfaction for services and expenses incurred by Tennessee." This surrender, therefore, was not a donation to that State, but was made in satisfaction for expenses incurred and services rendered.

The general condition of most of the territory lying on the Mississippi river, in each of the States bordering on it, from about midway in Missouri and the northern boundary of Illinois to the southern limit of Louisiana, is of a low and overflowed character; alluvial in its principal formations, and possessing a degree of fertility unexcelled by any lands on this continent, it has at all times been sought after since it became the property of the United States, in preference to most of the adjacent highlands, of known excellent qualities. But a large majority of this territory was subject to annual overflow by the Mississippi, greatly depreciating its value, and much of which lay so far below its periodic high tides as to render it comparatively worthless.

That portion of it lying in Tennessee and Kentucky is equally valuable for agricultural and other purposes, and similarly liable to inundation with that in the other States bounded by this river. Such of these lands as were above ordinary overflow have been successfully cultivated for many years, yielding profitable crops to the farmer; and from their high character for fertility had acquired a fair value in the land markets of the country.

Swamp Land Act.

By an act of Congress, September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is enacted: "That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State."

By this law, as its title indicates, all the swamp and overflowed lands which were unsold at the passage of the act were granted to the several States in which they were located, to enable them to construct the necessary levees and drains to reclaim them. This law transferred to these several States millions of acres of what were called swamp and overflowed lands—see table marked A, in this report—for the expressed purpose of enabling them to build the levees, which have resulted injuriously to the citizens of the States of Tennessee and Kentucky, and are now a subject of complaint.

By this law it will be observed that the general government gave away all the swamp lands to the several States, not only for no pecuniary considerations, for expenses incurred, or otherwise, but for the avowed purpose of enabling them to construct levees and drains for their reclamation, the whole benefit of which was to inure to such States. Out of this munificent fund they have constructed levees in conformity with the tenure of that law, extending along a portion of their river boundaries.

From the information before this committee the operations of these levees have been disastrous in their influence to lands and other property of citizens of Tennessee and Kentucky. We are alluding more particularly, however, to the effects of the levee system in those portions of Missouri and Arkansas lying immediately west and opposite the States named.

By obstructing the diffusion of the water when flowing over the river banks, in all high tides, as these levees do, and preventing its egress over the adjoining lowlands, which extend back from the river ten, twenty, and forty miles, the result is, as might have been readily anticipated in changing the lateral course of this vast sea of water, to force and precipitate its deluging accumulations over the eastern shore; producing overflows from one to three feet higher than was ever known previous to the building said levees; inundating the whole river country; submerging thousands of acres of the most valuable lands in the bottoms; undermining and washing away the bank by the acre, in many places where this shore has withstood the action of the current in all stages for nearly half a century; destroying growing crops; drowning stock of every kind; rendering unsafe the dwellings of the inhabitants; depreciating the value of the lands for all uses; ruining the property and prospects and endangering the lives of many of our citizens. Nor do the evils stop here; the levees built on the western bank of the Mississippi are now being enlarged and strengthened, and are designed for durable and substantial structures; therefore the evils and damages arising from this source must be as continuous as those embankments are enduring.

The facts are within the knowledge of some of this committee, that large quantities of these lands, embracing some of the highest and best on the river, have, within the last year, been thrown out as a barren and worthless waste from the large deposits washed broadcast over them, much of which was caused and consequently attributable to the grievances complained of by these memorialists.

Such, in brief, are the influences of the levee system on the eastern

bank of the Mississippi to lands and other property of citizens on the opposite shore, in Tennessee and Kentucky.

This committee is unable to view this branch of the subject in any other light than that the acts of Congress, already referred to, donating the swamp lands to the several States, are the basis and fountain from which flow many of the disastrous consequences enumerated. Those acts declare that the express object for which the swamp lands were given to the States was to aid in the building of these levees. Had those acts never been passed by Congress, out of which has sprung the levee system, this damaged territory would now be in the enjoyment of its former prosperity, both as respects its yearly productions, its permanency of value, and the security of all other property on it, subject only to such dispensations of Providence as may affect all property in similar locations.

It is no part of our duty to inquire into the original value of these lands or the prices paid for them; whether they were purchased at nominal or high rates, it is evident, with the general enhancement of this class of property everywhere, and the labor and improvements which have been placed upon them, that they have greatly increased in worth over former valuations, and any injury or damage they may now sustain affects their present estimated price. It is in this aspect only the question can be fairly and justly considered.

Many of our most worthy and industrious citizens have their homes upon and their entire property in these lands. There they have purchased their homestead, there they now live, and there they have hoped to make their support, and though many of them may have limited means, we are prepared to appreciate their homes, their property, and their labors to be as dear and as valuable to them as the homes and the labors of the more affluent in life. So should their rights be as sacredly respected by this government as those of any other of its citizens; and when it is known that their rights and interests have been interfered with and their property ruined by the influences of the levee operations on the western shore of the river, as is proven in this instance, and when it is remembered that the levee system is no other than the act of government, the argument is clear and unquestionable that they have just and undoubted claims on Congress for indemnity.

If the general government in its munificence gives away millions of acres of the public domain—called swamp lands though they may—to many of the States for the construction of works detrimental in their nature to the surrounding country, certainly it will not reject the appeals of these people who come here to seek relief from the detrimental consequences growing out of such acts of munificent legislation.

If Congress, in its liberality, has seen proper to make large grants of the public lands for the construction of railroads and other internal improvements, for the support of colleges, schools, &c., surely it will not refuse the petition of these memorialists, who present a claim on it springing from and rendered valid and binding by its own acts.

The lands and territories of this government were acquired by the common sacrifices and contributions of the people, and their rights

in the security and enjoyment of their private property should be respected in the disposition of them ; and while we disclaim the power of Congress to make partial, unnecessary, or unconstitutional appropriations in either lands or money for any purpose, we cannot, upon sound principles, reject the demands of justice and equity, where the rights of innocent parties are involved and endangered by our laws.

The territory embraced in the swamp land act of 1850 was acquired under the same general rules that have controlled the action of government in the acquisition of all lands. When thus acquired it was common property, whether worthless or valuable ; while it was the property of the government it was harmless and unoffending ; had it remained in its possession, it would have continued so. In the act ceding it to the States it did not occur to these memorialists—and we presume to no one—that they were witnessing an enactment, and assenting to a law, carrying with it a dagger to pierce their own vitals.

The argument that “a State may have no recourse on the general government, although an acknowledged injury has been committed by it, and where the public lands would be involved as a compensation for such injury, because there are no public lands in the State to repair such damage, is untenable, for the sufficient reason that lands heretofore donated to the States for levee or other purposes were the property of the nation. Tennessee and Kentucky, for instance, having their interests in them in common with all the States. It was not the property of the particular State within whose limits it was located, nor had such State, by any principle of our government, exclusive claims to its appropriation. It was domain belonging to the States united, and grants made out of it for any specified purposes were made by the liberality of all the States, for the benefit of the parties receiving it, and for the particular objects for which they were made.”

“Congress, in its liberality, may not make grants of land to any State, where the enjoyment or appropriation of such grants result in detriment and damage to another State, or to private property in another State, and refuse reparation for the injuries done, on the ground that such injured State has no public lands within its limits with which to repair them.”

In order to show the amount of territory government has already given away under the “swamp land” act, for the especial benefit of individual States, and to exhibit the liberality and lavishness it has exercised in appropriating large quantities of the public lands for various works of internal improvement to many of the States, we have taken the following tables, as we find them in the report of the Commissioner of the General Land Office for 1858 :

A.

Statement exhibiting the quantity of land selected for the several States under the acts of Congress approved March 2, 1849, and September 28, 1850, up to and ending September 30, 1858.

	Acres.
Ohio.....	54,438
Indiana.....	1,324,732

	Acres.
Illinois.....	3,243,891
Missouri.....	4,248,203
Alabama ..	2,595
Mississippi.....	2,836,675
Iowa.....	1,752,296
Louisiana	11,202,343
Michigan.....	7,273,724
Arkansas.....	8,562,752
Florida	11,790,637
Wisconsin	2,827,199
Total	55,129,492

Here we have an exhibit of fifty-five millions one hundred and twenty-nine thousand four hundred and ninety-two acres of the public lands, donated by government for no price or consideration, but for the purpose of building levees and drains to protect it from overflow and fit it for cultivation. With such an exhibition of wholesale liberality, this committee does not believe that government would hesitate to order a survey and to make a donation of lands, if called on for that object, to aid in building levees and drains to reclaim and protect from inundation a similar class of lands, which were purchased and paid for by its owners from government, and which is now being destroyed and ruined by the action of the very levees a large portion of the above-named lands were given to construct.

In addition to these acts of liberal legislation, we find others of different purport, of still greater magnitude as to value, in the same report.

The following is an exhibit of the grants of lands for railroads by Congress from the year 1850, showing the States to which the grants were made, dates of laws, &c. :

States and Territories.	Dates of laws.	Quantity granted.
		Acres.
Illinois.....	September 20, 1850.....	2,595,053
Missouri.....	June 10, 1852, and February 9, 1853.....	1,815,435
Arkansas.....	February 9, 1853.....	1,465,297
Michigan.....	June 3, 1856.....	3,096,000
Wisconsin.....	June 3, 1856.....	1,622,800
Iowa.....	May 15, 1856.....	3,456,000
Louisiana.....	June 3, 1856, and August 11, 1856.....	1,102,560
Mississippi.....	August 11, 1856.....	950,400
Alabama.....	May 17, June 3, and August 11, 1856.....	1,213,390
Florida.....	May 17, 1856.....	1,814,400
Alabama.....	March 3, 1857.....	700,000
Minnesota Territory.....	March 3, 1857.....	4,416,000
		24,247,335

Besides the foregoing grants and donations, embracing an aggregate of 79,376,827 acres in swamp lands and lands granted for the construction of railroads, there have been contributed by the government for "canals, &c., &c., 10,897,213 acres."

It may be well to observe in this connexion that we do not introduce into this report the amount of lands granted by Congress for internal improvement purposes with a view to basing an argument in support of the propositions referred to this committee; we allude to them simply to show the liberal spirit that has actuated Congress in behalf of a large number of public improvement measures which have been presented here for government aid.

After such an array of liberality, absorbing millions of acres of public property, in neither of which were principles of justice, right, or equity involved; no such thing as homes rendered desolate and forsaken, property submerged and ruined, prospects overwhelmed and destroyed, and all these by the hand whose duty it was to foster and protect; where no argument could be advanced in their behalf other than the promotion of certain improvements, many of which were of questionable import, we entertain the belief that this government, in the face of its precedent acts, will as readily and cheerfully exercise its liberality to satisfy the demands of a meritorious claim, as it was in its legislation in the cases referred to.

We will cite an instance or two, out of many that might be collated, where Congress has exercised its authority in favor of propositions involving principles in the abstract parallel with the measure referred to us.

On July 22, 1854, Congress passed an act making the further appropriation of \$140,000 for the improvement of Cape Fear river, North Carolina.

In signing this bill President Pierce said: "That my approval is given to it on the ground that the obstructions which the proposed appropriation is intended to remove are the results of the acts of the general government."

Again, March 3, 1855, an act was passed by Congress, making a further appropriation of \$161,000 for removing obstructions in the Savannah river, Georgia.

The necessity for this appropriation originated in this manner: During the revolutionary war, while Savannah was in possession of the British forces, under the command of General Provost, the Americans sought to regain possession of that city, relying upon the co-operation of the French fleet, under the command of Count D'Estaing.

Provost sunk several hulks in the Savannah river to prevent the French commander from approaching the city to aid in the undertaking. To remove these obstructions Congress made this, together with previous appropriations, from the public treasury.

There is now being made a topographical and hydrographical survey of the delta of the Mississippi river, under an act of Congress, with such investigations as might lead to determine the most practical plan for securing it from inundation.

In the foregoing precedents the constitutional power of Congress was not doubted by a majority of its members; it has employed this

power from the foundation of the government to this day, and most of its acts have been sanctioned by the people. When, therefore, in the exercise of this acknowledged authority, it is proven that injury has been inflicted to any section of the country, and that, too, perpetual in its character, the power of Congress to remedy or repair the wrong committed is unquestioned and unquestionable.

This committee can arrive at no other conclusion, impressed as each member of it is that governments, among other considerations, are created for the common and equal protection of its citizens; that the Constitution and Congress of the United States were established with a view to securing these high and inalienable principles to each of the members of this republic, and to the citizens of each of its members, not for opposite, partial, or oppressive legislation; and as any other policy than to repair injuries committed by the legislative power would tend to subvert these fundamental objects, and overthrow the rights and expectations of the people, we cannot understand upon what principle of law or equity it will refuse reparation in this case, especially after a full statement of the facts has been brought to its knowledge.

The powers of Congress under the Constitution are general, but specified in their character, limited and defined in their latitude. It is designed that its legislation shall be equal and uniform over all sections; its burdens and benefits equally distributed; it shall violate no contracts nor interfere with the vested rights of the people; its mission is to protect, and not destroy the rights and property of the people; it shall neither take nor destroy the property of its citizens in time of war, except by remuneration; it possesses no additional power in seasons of peace than when in a state of war; it shall neither barter nor traffic in the people's rights in a state of either peace or war; if government is the power and will, collective, of the people, then, like its citizens, it should be responsible for its acts; if to secure and protect the life, liberty, and property of its citizens form a part of its duties, then it should repair an injury done to its citizens by its own acts as readily and promptly as when such injury had been committed by an alien nation; and if its swamp land laws of 1850 have resulted in injury to the people of Tennessee and Kentucky, it is obligatory upon it to repair and remove it by counter operations.

We deem a compliance with the demands of these memorialists due to them as an exhibition on the part of Congress to legislate justly and equally to all sections. The States of this Union are equal in their common rights and privileges, and the law-making power of the government should be based upon and controlled by this admitted fact, irrespective of all lateral or secondary considerations.

The overflowed country in Tennessee and Kentucky is about one hundred and eighty miles in length, and embraces an area of over 1,000,000 acres. Located in the heart of the nation, boundless in its capabilities of production, and adapted to the successful cultivation of every variety of products peculiar to our climate and highlands, contiguous to river navigation and railway facilities, its reclamation is a subject of paramount importance to the States and to the Union.

We might, if appropriate to the occasion, undertake to compute the annual productions of this territory in a reclaimed condition, and their respective values; but as these subjects are not strictly embraced in our present duties, we shall pass them over.

To levee in this country will require an embankment nearly its entire length; and it is to obtain correct measurements, and the cost of its construction, that a survey by the government is asked for.

The people are willing to assist in the labors of this work; but they are wholly unable to defray the entire cost of so great an undertaking. Were they in the enjoyment of the means of liberal government aid, as all their neighbors along the Mississippi are, with which to construct levees, they might, as their neighbors have, by tax, sale, or other means, raise a fund sufficient to build their own embankments. But they have received no such aid. The cost of a levee of the requisite proportions would absorb the worth of their entire river possessions. As they are unable of their own ability to protect themselves; as the grievances from which they now suffer have not arisen from any act or deed of their own, but from the enactments of Congress; and as the lands upon which they now live, and which are being thus damaged, were purchased by them of the government for a valuable consideration, it is just and proper that it should assist them to construct a work for their necessary security, which they are wholly unable to perform of themselves.

It is believed by this committee that the "commerce and navigation of the Mississippi will be promoted by a perfect protective levee system on both banks of the river. Then, in all high tides, the whole volume of water will be confined within the levee embankments; it will not flow over broad surfaces as at present. Thus restricted in its width, its vast accumulations will be impelled onward in its course with accelerated velocity, and, with its increased force and quantity, sweep from its natural pathway many of the lesser islands and sand bars that form with every successive tide, making a deeper, safer, and more permanent channel than has heretofore characterized its ever-changing meanderings."

A substantial system for both shores of the river will preserve its banks from undermining and washing away as they do now in high water; there will be less alluvium to be carried off by the current; and as these influences would extend through the entire alluvial formations, it would diminish the accumulations of deposit at its delta, and thus be a means of protection to the harbor of New Orleans. The banks being preserved by the presence of the levees, and the water prevented from flowing over the surrounding country, there will be less timber and drift within its reach to be carried off by the floods, and consequently a greater decreased number of snags to obstruct its channel. In this manner the security of life and property of all who may have occasion to travel or navigate the Mississippi will be comparatively assured from many of the innumerable disasters that annually occur upon its waters.

An impression has obtained that leveeing this river on both banks would greatly increase its height measurements in flood time, and

require many additional feet to be put upon the old embankments generally; but we hold the opposite opinion. A continuous system may and undoubtedly will increase the velocity and force of the current, when the water is high enough for the embankments to exert any influence on it, over what it would be if permitted to flow over the whole country; but restricted in its limits, with an increase of momentum from the surface to the river bottom, consequent upon its restrictions, with a diminished area of territory to flow over and feed upon, its tendency will be to plough up the river bed from season to season, and deposit the aluvium upon the banks; and thus, while it is furrowing out a deeper channel for its passage, it is increasing the heights and permanency of the shores, and rendering less and less necessary the levee system from year to year.

It seems to us proper to state a few of the leading features of this great river. "Its length is 3,100 miles, and if the Missouri be regarded as its continuation, it is 4,500 miles long. It would reach from New York across the Atlantic, and extend through France, Germany, Austria, and Turkey, in Europe, and penetrate the remote Caspian sea in eastern Asia."

"The total value of steamers afloat on the Mississippi and its tributaries is estimated to be over \$6,000,000, and numbering 1,500, with an aggregate burden of more than twice the steamboat tonnage of England, and probably equal to that of all other parts of the world. It drains an area of 1,200,000 square miles," and its passenger travel is computed at 1,500,000 persons annually. Its commerce and tonnage are increasing in a ratio commensurate with the growth, products, and population of the republic. Any necessary improvements, therefore, that will promote its security and facilitate its navigation are considerations of national importance, and when carried out redound to the advantage of the whole country.

As the resolution referred to us asks for a survey of the river boundary of this injured territory, in order to ascertain the cost of a levee for its protection, and as such survey may not require an appropriation for the purpose, the government having engineers in its employ, many of whom are engaged in less important service to the country than the labors contemplated by this resolution; and in order that Congress and these memorialists may be informed as to the measurements and cost of this work, and from the general considerations enumerated in this report, this committee recommend unanimously its adoption by Congress.

JNO. D. C. ATKINS,
ERASTUS CORNING,
J. B. CLARK,
W. L. UNDERWOOD,
WM. KELLOGG,

Committee.